

# ARNOLD & PORTER LLP

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August 23, 2016

## VIA EMAIL AND U.S. MAIL

Attn: Donna Rawls, Paralegal  
Federal Election Commission  
Office of Complaints Examination and Legal Administration  
999 E Street, NW  
Washington, DC 20436

RE: *MUR 7101 – Vitreo Retinal Consultants of the Palm Beaches*

Dear Ms. Rawls,

This letter provides the response of my client, Vitreo Retinal Consultants of the Palm Beaches, P.A. (“VRC”), to the relevant allegations of the Complaint in FEC matter number MUR 7101. VRC rejects any suggestion that it may have violated the Federal Election Campaign Act of 1971, as amended (“the Act”), and demonstrates by this letter that no action should be taken against it. VRC is not a party to the Complaint, but is referenced in Paragraphs 54-55 as having made two donations in 2012 to Senate Majority PAC that allegedly exceeded the supposed \$5,000 limit on annual aggregate contributions to certain committees making independent expenditures.<sup>1</sup> See 52 U.S.C. § 30116(a)(1)(C); 11 C.F.R. § 110.1(d), (n). As explained below, these allegations do not support any action against VRC.

First, VRC’s alleged contributions did not violate the Act, because its allegedly violated provisions are unconstitutional. As the Complaint concedes, § 30116’s supposed contribution limit was held unconstitutional by the U.S. Court of Appeals for the D.C. Circuit in *SpeechNow.org v. FEC* (“*SpeechNow*”), 599 F.3d 686 (D.C. Cir. 2010) (*en banc*). Subsequently, the Supreme Court relied on *SpeechNow* as authoritative for its holding that contributions to independent expenditure committees cannot be restricted. See *McCutcheon v. FEC*, 134 S. Ct. 1434, 1442 n.2 (2014) (plurality op.) (“A so-called ‘Super PAC’ is a PAC that makes only independent expenditures and cannot contribute to candidates. The base and aggregate limits

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<sup>1</sup> As noted in my August 1, 2016 letter to you, FEC Assistant General Counsel Jeff S. Jordan’s original July 14, 2016 letter to VRC was accompanied by an incomplete copy of the Complaint that included no allegations concerning my client. After receiving my letter, you sent a complete printed copy of the Complaint to my colleague Murad Hussain, which he received on Monday, August 8, 2016.

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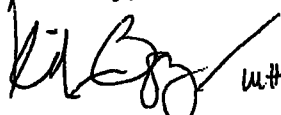
govern contributions to traditional PACs, but not to independent expenditure PACs. *See SpeechNow.org v. Federal Election Comm'n*, 599 F.3d 686, 695-696 (C.A.D.C. 2010) (en banc).”).

Indeed, the FEC itself relied on *SpeechNow* in its 2010 advisory opinion concerning Senate Majority PAC (under that independent expenditure committee's former name, "Commonsense Ten"). *See* FEC Advisory Op. 2010-11, 2010 WL 3184269 (July 22, 2010). In that opinion, the FEC explained: "Given the holdings in *Citizens United* [*v. FEC*, 558 U.S. 310 (2010),] and *SpeechNow*, . . . the Commission concludes that there is no basis to limit the amount of contributions to the Committee from individuals, political committees, corporations and labor organizations. Accordingly, the Commission concludes that the Committee may solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations." *Id.* at \*2.

But even if the FEC were to reverse its position and reject the D.C. Circuit's constitutional ruling, the existence of the *SpeechNow* decision and the FEC's advisory opinion on Senate Majority PAC negates the possibility of any legal violation, "knowing" or otherwise. *E.g.*, 52 U.S.C. § 30108(c)(2) ("Notwithstanding any other provisions of law, any person who relies upon any provision or finding of an advisory opinion . . . and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of any such act, be subject to any sanction provided by this Act or by chapter 95 or chapter 96 of title 26."); *id.* § 30109(d) (providing that certain penalties require "knowing and willful" violations). The Complaint concedes as much and declines to seek sanctions for past conduct. (Compl. ¶ 7.)

For these reasons, we respectfully request that the FEC should bring no action against VRC, find that VRC did not violate the Act, and close this matter as to VRC. Please do not hesitate to contact me if you have questions or require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Ogrosky", with a stylized flourish at the end.

Kirk Ogrosky

cc: Murad Hussain, Esq.